

Testimony *in Support of* SB 6: Revise Public Water Supply Fee Law

January 12, 2009
Senate Local Govt. Committee

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Affiliation:

Personal Testimony

Employment:

Currently: Principal, The Cadmus Group Inc, Helena Office

- ❖ An Environmental Consulting Company providing contracting support to USEPA's Safe Drinking Water Act programs;
- ❖ Also provide limited contract support (currently less than 1% of annual revenues) to Montana's Public Water Supply Program.

Formerly: Field Services Program Manager, MT Public Water Supply Program

- ❖ Staff support for the 1991 PWS Task Force (when the 1991 Montana Legislature approved the PWS fees).

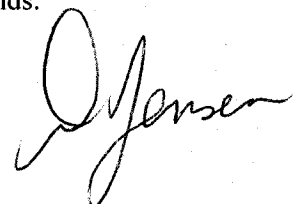
Testimony:

The MT PWS program has had to rely on fees to support core program responsibilities since 1991 when the State was at risk for losing primary enforcement authority (primacy) for Safe Drinking Water Act regulations. At that time a Task Force was convened to determine whether primacy was worth the investment of resources for the services provided to the public. Utilities, technical assistance providers, public interest groups, Counties, and other entities were members of the Task Force. The Task Force was facilitated by a 3rd party.

The Task Force concluded this program was important to Montana and the public health of consumers, and felt the program was not as effective as it should be because of inadequate funding. The Task Force suggested a fee-structure was warranted to support the program; use of General Fund monies was preferable but were not available, and fees were seen as the only alternative.

The August 15, 2008 USEPA Region 8 Report on Montana's PWS program describes an existing situation at the PWS program that is significantly similar to the 1991 crisis – that report conveys EPA's concerns that the State program is inadequately funded and details significant responsibilities the program must implement to meet their responsibilities.

I am here to testify my support for this essential Montana program and the necessary increase in fees to return the program to sustainable levels. The importance of this program cannot be understated – it ensures public water systems provide safe drinking water, assists water systems with compliance instead of relying largely on enforcement actions after-the-fact, and keeps oversight of the Safe Drinking Water Act provisions in our own, Montana, hands.



Report to

DHES

Governor Stephens

the 1991 Legislature



prepared by the

MONTANA

Public Water Supply

Task Force

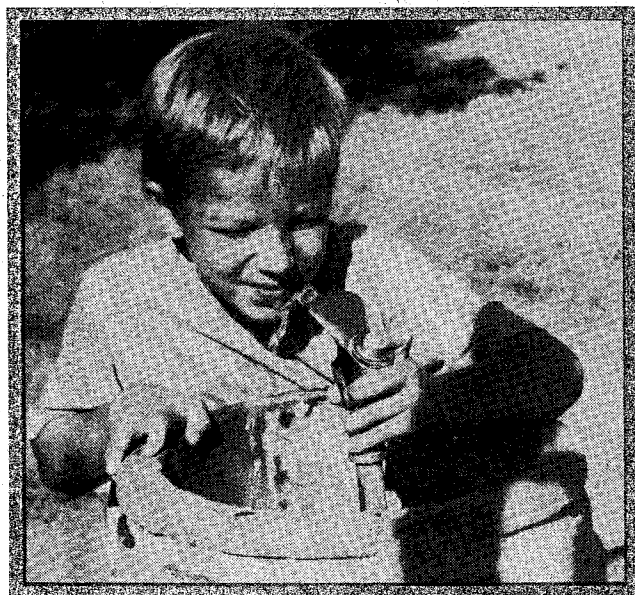




Montana's Public Water Supply Program faces a crisis. The program is not as effective as it should be because of inadequate funding and a shortage of staff. As a result, the state is unable to enforce drinking water standards or properly monitor water systems. Consumers are therefore at greater risk of drinking water that may be contaminated. Without adequate funding for the Public Water Supply Program, drinking water problems will likely increase.

The program's primary enforcement authority (primacy) over the federal Safe Drinking Water Act (SDWA) may be lost if new regulations are not enforced by the state. Without additional funding and staff, the Public Water Supply Program can not handle the additional requirements. Loss of primacy would eliminate federal funding assistance and return enforcement authority to the U.S. Environmental Protection Agency (EPA).

In the spring of 1990, the Governor's Office and the Department of Health and Environmental Sciences (DHES) appointed a Task Force to develop policies for the Public Water Supply Program. The Task Force consisted of 30 individuals from utilities, local health departments, state agencies, organizations working with water systems, and the general public. This executive summary explains the problems facing the Public Water Supply Program and details the Task Force's conclusions and recommendations.



Current Public Water Supply Program

The DHES's Water Quality Bureau is responsible for administration of Montana's Public Water Supply Program. The program is managed by the bureau's Public Water Supply Section, which also includes the Operator Certification and Subdivision programs. The program currently employs 12.5 full-time equivalents (FTE's) and contracts for an additional FTE for water system inspections.

Since 1977 the Public Water Supply Program has held primary enforcement authority (primacy) over the federal Safe Drinking Water Act. Recently, however, inadequate funding and staff shortages have prevented proper enforcement of drinking water requirements. In addition to jeopardizing public health, this has placed Montana at risk of losing primacy to the federal government.

To adequately enforce the drinking water regulations, excluding the Operator Certification and Subdivision programs, 18.5 FTE's are needed. This would require hiring an additional 5 FTE's for the Public Water Supply Program. Although these new positions have been approved by the administration, funds have not been available to fund them.

1986 Amendments to the Federal Safe Drinking Water Act

In 1986 Congress passed significant amendments to the original Safe Drinking Water Act in response to public concern over inadequacies of the original act and health risks of drinking water. These amendments tightened drinking water standards, mandated strict regulatory deadlines, and accelerated enforcement activities.

The 1986 SDWA Amendments required EPA to create new regulatory packages in the following areas:

- Volatile organic chemicals
- Microbiological organisms
- Inorganic chemicals
- Radionuclides
- Pesticides and herbicides
- Disinfection by-products
- Treatment of surface-water systems
- Disinfection of all groundwater supplies

Also addressed by the amendments are a ban on lead materials in water systems, development of state wellhead protection programs, and a detailed public

notification program to inform water users of contamination and compliance problems.

Almost all of Montana's 2,400 public water systems will be affected by these amendments. However, small water facilities (comprising over 96% of Montana's systems) will have the most difficulty in meeting the new requirements. Their limited resources and narrow tax base can not readily handle the technical and financial impacts of the regulations.

In order to completely meet the new regulations, Montana's Public Water Supply Section is estimated to need 59.25 FTE's (1.8 for Operator Certification; 5.55 for Subdivisions; and the remaining 51.9 for the Public Water Supply Program). These needs are comparable to those of other states' drinking water agencies preparing to meet the 1986 SDWA amendments.

Loss of State Primacy

If Montana loses primacy, the EPA will become the primary enforcement authority over public water supplies in the state. EPA enforcement action will occur only after health standards are exceeded or systems are in violation of the SDWA. The EPA's approach to Montana's public water supplies will be strictly regulatory, not preventative.

Loss of state primacy will also result in a loss of federal funding assistance which is essential to Montana's drinking water programs. These programs include operator training, public education, technical assistance, responses to contamination, and investigations of waterborne diseases. The Subdivision and Operator Certification programs would also suffer because of their reliance on the Public Water Supply Program for staff and funds.

Continuing to fund existing state drinking water programs without primacy would cost Montana an additional \$1.18 million over existing state support. Elimination of the Public Water Supply Program with retention of only the Subdivision and Operator Certification programs would still require an additional \$339,184 over the present budgets of these programs. Clearly, Montana will face a greater financial burden if federal funding assistance to its drinking water programs is lost.

Task Force Conclusions and Recommendations

After carefully reviewing the problems facing Montana's Public Water Supply Program, the Task Force developed the following conclusions and recommendations.

Conclusions

- Montana's Public Water Supply Program should retain existing regulatory and technical assistance functions.
- Montana's Public Water Supply Program must be expanded to include requirements of the amended Safe Drinking Water Act and state primacy must be retained.
- Legislative changes must be made to authorize the DHES to assess fees to supplement funding of the Public Water Supply Program.

Recommendations

- Montana must provide a comprehensive Public Water Supply Program including preventive and enforcement activities.
- The Public Water Supply Section should be staffed and funded to support the interim program shown in Figures 1 and 2.
- The Sanitation in Subdivisions Act, MCA 76-4-105, should be amended to increase fees to support an additional 1.0 FTE.
- The Public Water Supply Act should be amended to authorize the Department of Health and Environmental Sciences to assess fees for services to alleviate the Public Water Supply Program funding shortfall. Funds raised through fees should be used to supplement existing funding of the Public Water Supply Program.*
- The Task Force should reconvene to reassess the status of the Public Water Supply Section and make recommendations for the 1993 Legislative Session.

**Fees should be generated as engineering plan review fees and service connection fees. Total cost for the program would not exceed the equivalent of a \$3 annual fee on each public water supply service connection. Very small water systems (those with less than 33 connections) may be assessed a minimum annual fee of \$100 to reflect their program support more equitably.*

It is important to note that any new fee assessments or increases in existing fee schedules would be determined through the rule-making process. This guarantees the public opportunity to review and com-

ment on the proposed fee changes needed to support the Public Water Supply Program.

Local units of government would receive the fees for services they provide, less costs of collection by DHES.

Figure 1 indicates staffing needs and duties for the interim program.

Figure 1-Interim Program FTE'S (34.5)

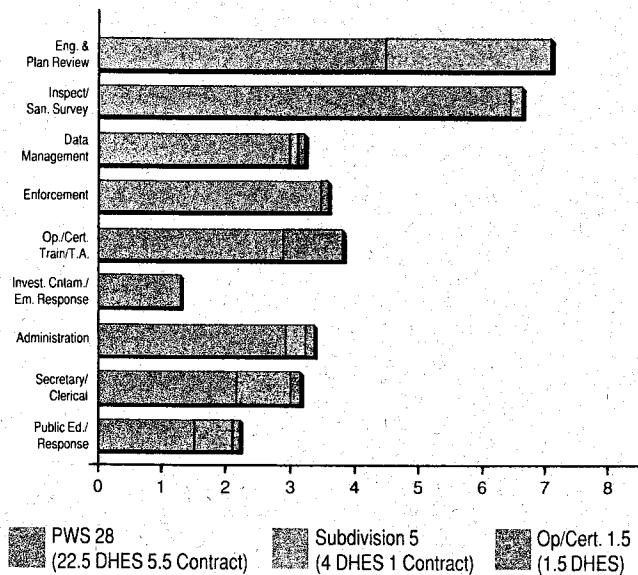
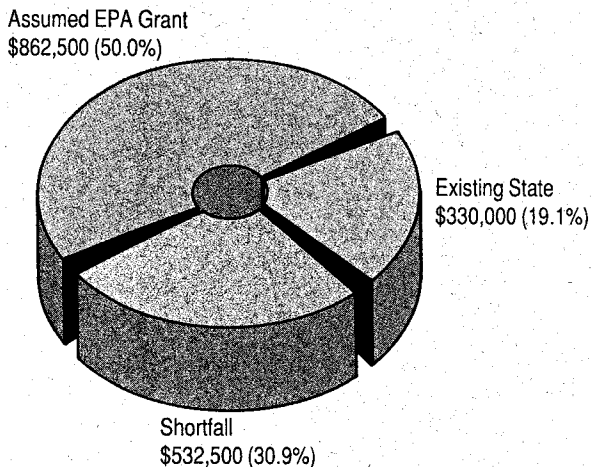


Figure 2 shows the revenue sources and funding needs for the interim program

Figure 2-Interim Program Funding FTE'S (34.5)



Total Interim Program \$1,725,000

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Proposed Interim Program for the 1992-93 Biennium

The Task Force realizes that substantive changes to Montana's Public Water Supply Program are needed to assure safe drinking water within the state. Because increased resources and further study are not yet available to make program improvements, the Task Force recommends an Interim Public Water Supply Program. This interim program would retain primacy and provide required drinking water services. It would address only rules effective prior to July 1, 1993 since new federal regulations will be phased in over the next several years.

The Interim Public Water Supply Program would require 34.5 FTE's, of which 6.5 could be provided by pass-through funding to local governments, consultants, or organizations such as Midwest Assistance Program or Montana Rural Water Association. It is the view of the Task Force that this interim program will both retain primacy and adequately serve Montana's public water systems for the next two years.



For further information please contact:
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